INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
And
SHRI R.C. SHARMA, ACCOUNTANT MEMBER

ITA No. 112/Ind/2013
A.Y. 2005-06

Shri Paramjeet Singh Chhabra
Indore
PAN – ABMPC2589B :: Appellant

Vs
Income Tax Officer 1(2)
Indore :: Respondent

Appellant by	Shri S.S. Sheetal
Respondent by	Shri R.A. Verma

Date of hearing	20.05.2013
Date of pronouncement	20.05.2013

O R D E R

PER JOGINDER SINGH, judicial member

The assessee is aggrieved by the impugned order dated 29th January, 2013 passed by the learned first appellate authority on the ground that the learned CIT(A) erred in holding that provisions

of section 50C are applicable to the case of the assessee rather the correct provisions of section 54/54F are applicable and further erred in holding that exemption of Rs. 15,56,056/- (Rs.17,50,000/- (-) Rs.1,93,944/-) claimed u/s 54 was not allowable to the assessee.

2. During hearing we have heard Shri S.S. Sheetal, learned counsel for the assessee, and Shri R.A. Verma, learned Senior DR. The crux of arguments on behalf of the assessee is that both the ground are inter-connected and the facts have not been appreciated in proper perspective by the Assessing Officer/CIT(A). It was also pleaded that the exemption claimed was in the fixed format of the Department and the later communication addressed to the authorities was not considered. Our attention was invited to page 16 of the paper book along with the administrative instructions of CBDT for guidance to the Income Tax Officer wherein it has been clarified that Officers of the Department must not take advantage of ignorance of an assessee as to his rights. The learned counsel further contended that for the fault of the counsel, the assessee should not suffer. A plea was also raised that all the details of the

construction of house were duly furnished by the assessee. Our attention was invited to pages 52, 54 and 55 of the paper book and the property tax return. The assessee also furnished a receipt issued by the revenue department of the MCD, Indore, for the A.Y. 2005-06 (receipt no. 18 dated 15.7.2005). Reliance was placed upon the decisions of the Tribunal dated 18.11.2011 in the cases of Prakash Kumawat (ITA No. 364/JP/2011) and Gyanchand Batra vs.ITO (2010) 133 TTJ 482 (JP). A plea was also raised that necessary details of house construction (statement of affairs) (page 19 of the paper book) were also filed before the lower authorities. On the other hand, learned Senior DR defended the impugned order by submitting that the assessee himself did not mention the correct sections of the Act for claiming deduction u/s 54 & 54F of the Act.

3. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that during the year the assessee sold a shop for Rs.18 lacs on 17.1.2005 and declared sale price while working out the capital gain and investment in construction of a residential house. The Assessing Officer, from the copy of registry, found that the market value

considered by the Sub-Registrar is Rs. 26,97,000/-. The Assessing Officer opined that there is a difference of Rs.8,97,000/- between the market value and the amount declared by the assessee for working out the capital gain. As per the Revenue, no specific explanation was given by the assessee. The assessee claimed exemption of capital gains by mentioning section 54B/54D/54G. The main plea of the Revenue is that correct section for claiming exemption for capital gains was not mentioned in the return. However, the plea of the assessee is that since it was a fixed format, the assessee was not wise enough to amend the same and also for the wrong doing of the counsel, the assessee should not be penalised. It was also pleaded that since this issue was brought to the notice of the Assessing Officer, it was incumbent upon the Assessing Officer to consider the exemption claimed u/s 54 under the correct section. We find that this claim of the assessee is fortified by para 8.3 of the assessment order itself wherein it has been mentioned that the assessee furnished a letter that it was claimed by mentioning a wrong section. Even the learned CIT(A) in para 7.1 has acknowledged this fact that while claiming the deduction u/s 54/54F, wrong sections were mentioned by the

assessee, therefore, the Assessing Officer did not consider the claim of the assessee. Under these facts, we are of the considered opinion that even if a wrong section was mentioned by the assessee in the return, it was the duty of the Assessing Officer to assist the tax payer in a reasonable way and to provide the relief if due to the assessee. This attitude rather will help the Revenue in assessing the income correctly. A correct advice by the Department would inspire the confidence of public at large. Even identical guidelines/instructions have been issued from time to time by the CBDT to its Officers (Circular No. 14(XL-35) dated 11.4.1955 and letter No. F.81/27/65-IT(B) dated 18.5.1965). If due to ignorance a wrong section has been mentioned by the assessee, it is the duty of the Assessing Officer to advise the assessee about the correct claim and also to assess the tax legitimately. This is the clear intention of the legislature. It is pertinent to mention here that even the profit arising out of commercial assets held for more than 3 years can be claimed u/s 54F by utilising the same for acquisition/construction of residential house because the language used in sub-section (1) of section 54F is “capital gain” from the transfer of any long term capital asset which may be residential as well as commercial. The

only requirement is investment within the specified time in a residential house (new asset) subject to certain conditions which are enumerated in the section itself. Even in sub-section (2) the language used is "original asset" meaning thereby no differentiation has been made between the residential or commercial so far as transfer/sale, arising out of, original asset is concerned. Without adverting further, we deem it appropriate to remand this file to the file of the learned Assessing Officer to examine the claim of the assessee afresh under provisions of section 54F of the Act, after providing due opportunity of being heard to the assessee. The assessee is also at liberty to furnish evidence, if any, to substantiate his claim.

4. So far as the invocation of section 50C of the Act is concerned, the ld. CIT(A) held that the Assessing Officer rightly took the fair market value of the properties as adopted by the stamp valuation authority for computation of capital gain. The learned counsel for the assessee relied on the decision in Gyanchand Batra vs. ITO (2010) 133 TTJ 482 (JP) and also Prakash Karnavat vs. ITO (ITA No. 364/JP/2011) order dated 18.11.2011. Section 50C was inserted by

the Finance Act, 2002 with effect from 1.4.2003. As per sub-clause (a) to sub-section (2) to section 50C, where the assessee claims before the Assessing Officer that the value adopted or assessed (or assessable) by the stamp valuation authority under sub-section (1) exceeds the fair value of the property as on the date of transfer, the Assessing Officer may refer the valuation of the capital asset to the Valuation Officer. Since we have remanded the issue of section 54F of the Act to the file of the learned Assessing Officer, therefore, the Assessing Officer is directed to examine the claim of the assessee on this point also.

In the result, the appeal of the assessee is allowed for statistical purposes.

This order was pronounced in the open Court in the presence of ld. Representatives from both sides at the conclusion of the hearing on 20.5.2013.

Sd/-	sd/-
(R.C.SHARMA)	(JOGINDER SINGH)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 21.5.2013
Copy to: Appellant, Respondent, CIT, CIT(A), DR, Guard File
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